

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JASMEN HOLLOWAY, et al.,

Plaintiffs,

No. C 05-5056 PJH

v.

ORDER DENYING MOTION TO STRIKE

BEST BUY CO., INC., et al.,

Defendants.

Before the court is Best Buy's motion to strike plaintiffs' motion for class certification because it is untimely and exceeds the scope of the four corners of their prior motion that the court requested be re-briefed. Although Best Buy requests that a hearing be held on this motion, the court finds that a hearing is unnecessary. Best Buy does not cite and does not rely on Fed. R. Civ. P. 12(f), but instead appears to request that the court simply exercise its inherent power to strike plaintiffs' motion because it is untimely and unauthorized. The court finds, however, that the motion was timely filed pursuant to the parties' stipulation and the court's order thereon.

The court regrets that so much of counsels' time has been expended on the question of the court's intention in requesting re-briefing of the motion for class certification – a question that could have been easily and quickly answered had a request for clarification been made. By requesting re-briefing of the motion, the court was attempting to obtain in one brief, a compilation of any and all arguments plaintiffs sought to make in support of class certification. Because plaintiffs opted to withdraw their prior motion, the court fully anticipated and expected that the original legal arguments and strategy might change in response to the en banc decision in *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d

571 (9th Cir. 2010) and in response to the various concerns raised by the court at the hearing on the prior motion and in the order for supplemental briefing. As plaintiffs note in their opposition brief at footnote 3, class certification is not necessarily a static event; the court may decertify a class that it has previously certified and a plaintiff whose first request for certification is denied may re-apply. Thus even if the court were inclined to “hold” plaintiffs to the arguments previously advanced, there would be nothing to preclude plaintiffs from advancing those arguments in a subsequent motion should their first one prove unsuccessful. The court finds such a piece-meal approach to be wasteful of the parties’ and the court’s resources.

The motion to strike is DENIED. The parties shall meet and confer and enter a further stipulation as to the briefing of this motion taking into account the amount of time that has been lost due to this issue. While the loss of time is regrettable, it shall not be counted against the time Best Buy was previously accorded to file its opposition, nor is the expanded page limitation reduced. The court will set a hearing after the matter is fully briefed and the briefs are reviewed by the court.

IT IS SO ORDERED.

Dated: August 27, 2010



PHYLLIS J. HAMILTON
United States District Judge